

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**2007 MTWCC 26**

**WCC No. 2004-1210**

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**AMY E. JONES**

**Petitioner**

**vs.**

**ALBERTSONS, INCORPORATED**

**Respondent/Insurer.**

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**ORDER DENYING REQUEST FOR STIPULATED  
SETTLEMENT, DISMISSAL, AND JUDGMENT**

**Summary:** The parties have asked this Court to approve a joint Stipulation for Dismissal and Order for Dismissal with Prejudice in settlement of a pending claim.

**Held:** The parties' request is denied because it contains terms that are unenforceable, as well as contrary to statute and the expressed public policy of this State as set forth in § 39-71-105, MCA.

¶ 1 Petitioner Amy E. Jones and Respondent/Insurer Albertsons, Incorporated, have asked this Court to approve a joint Stipulation for Dismissal and Order for Dismissal with Prejudice to settle Petitioner's pending claim against Respondent.

¶ 2 The stipulation presently at issue is the second stipulation filed by the parties. The initial stipulation contained the following language:

4. That Petitioner hereby intends and does hereby settle any and all claims, filed or unfilled, known or unknown, that she may have under the Workers' Compensation Act or Occupational Disease Act as a result of her employment with the Respondent, Albertsons, Inc. Any claim for compensation, rehabilitation and medical benefits for any filed or unfilled, known or unknown claims is denied by the Respondent and all compensation, rehabilitation and medical benefits for any such claims are expressly closed.<sup>1</sup>

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<sup>1</sup> Stipulation for Dismissal and Order for Dismissal with Prejudice filed April 4, 2007 at 2. Docket item no. 19.

¶ 3 I informed counsel for both parties by letter that I would not approve the settlement as written.<sup>2</sup> I stated that I had both procedural and jurisdictional concerns about the language which sought to settle “unknown” and “unfiled” claims. I pointed out that this Court has previously held that settlements can be and often need to be creative, and “So long as they are fair and do not conflict with specific requirements of the workers’ compensation laws . . .” they will be approved.<sup>3</sup> I advised counsel that this continues to be the philosophy of this Court and, whenever possible, I will assist in any way I can to facilitate the resolution of claims via settlement. However, when asked to enter judgment on claims which are unknown and unfiled, there is no meaningful way for me to ascertain whether the settlement for such unknown claims is “fair.” More fundamentally, I cannot see how this Court can assert jurisdiction to enter a judgment on claims which are unfiled. If a claim is unfiled it is, by any definition, not before this Court. Therefore, I believe jurisdiction is lacking to enter such a judgment.<sup>4</sup>

¶ 4 At the request of counsel for Respondent, I conducted a conference call and discussed my concerns at length. I then requested that the parties amend the settlement documents and resubmit them for my approval. The parties submitted an amended stipulation with the aforementioned language removed and the following inserted:

4. Petitioner is no longer an employee of Albertsons, Inc. Petitioner hereby affirmatively represents that she has no other claims which she intends to file under either the Workers’ Compensation Act or Occupational Disease Act as a result of her prior employment with the Respondent, Albertsons, Inc. In the event Petitioner hereafter files any new claims under either the Workers’ Compensation Act or Occupational Disease Act as a result of her prior employment with the Respondent, Albertsons, Inc., this stipulated settlement shall be deemed void and Petitioner shall, within 30 days, repay Respondent the entire sum of this stipulated settlement plus interest at the rate of 10% per annum accruing from the date of this Stipulation.<sup>5</sup>

¶ 5 At the outset, it bears noting that this Court receives a large number of stipulated settlements and the vast majority are readily approved. A very small minority of stipulations are not approved as initially submitted and, typically, the language as resubmitted is approved. This case is the exceptional case where I find that the parties have been unable to revise the language of a stipulation in a satisfactory manner.

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<sup>2</sup> Letter from Judge Shea to counsel dated April 30, 2007. Docket item no. 20.

<sup>3</sup> *Householder v. Republic Indem. Co. of California*, 2001 MTWCC 41A.

<sup>4</sup> In discussions with counsel on another case in which this issue came up, I was asked whether other claims which were not part of the original petition could be included in a stipulation for settlement, provided these other claims were identified in some fashion. I advised that I had no objection to this practice.

<sup>5</sup> Stipulation for Dismissal and Order for Dismissal with Prejudice filed May 22, 2007 at 2. Docket item no. 22.

¶ 6 In light of my review of the file in this matter, I find no problem with the consideration that is being offered for this specific claim. The difficulty lies with the provisions by which Respondent has attempted to curtail Petitioner's right to file future unknown claims.

¶ 7 As I advised the parties in my letter, I subscribe to the previously expressed philosophy of this Court that settlements can be and often need to be creative and will be approved provided they are fair and do not conflict with specific requirements of the workers' compensation laws. Moreover, I certainly have no interest in putting up unnecessary roadblocks to effectuating the settlement of a claim. However, I conclude that it is improper for the Court to enter a judgment which contains terms which are clearly unenforceable.

¶ 8 Section 39-71-409(1), MCA, specifically provides that an agreement by an employee to waive any rights under the Workers' Compensation Act is not valid. In this case, the language which I find objectionable puts Petitioner in the untenable position of having to either waive her right to this settlement or waive her right to make a future, unknown claim.

¶ 9 This Court has been urged to agree to stipulations similar to this in the past, with one or both parties arguing that provisions such as this are unenforceable on their face and therefore harmless. At times, because of the logistical circumstances of the particular case, and because both parties were represented by counsel, I have approved the settlement with the caveat conveyed to both parties that I viewed some of the terms to be unenforceable. Such a practice on a regular basis becomes problematic, however, not only from a practical standpoint but from a public policy standpoint as well.

¶ 10 Section 39-71-105, MCA, sets forth the express public policy of the State of Montana regarding the workers' compensation system. It provides, *inter alia*, that Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering, and that this system must be designed "to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities."<sup>6</sup> The language proposed by the parties in the most recent stipulation, even if it appears unenforceable to individuals who work within the workers' compensation system, would not appear unenforceable to the average layperson. The purpose of this language clearly is intended to dissuade a claimant from filing any future claims, regardless of merit. Should such a claimant learn in the future that he is suffering from a latent occupational disease, the terms of this agreement would compel him to repay his settlement, plus interest, in order to pursue a claim which may be worth significantly less compensation than the settled claim but which may be a valid claim, nonetheless. This implicates yet an additional public policy issue.

¶ 11 Section 39-71-105(1), MCA, provides that an objective of Montana's workers' compensation system is to provide, without regard to fault, wage-loss and medical benefits

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<sup>6</sup> § 39-71-105(4), MCA.

to a worker suffering from a work-related injury or disease. Nothing in this expressed public policy can reasonably be construed to allow an insurer to require a claimant to forego the benefits of one claim in order to pursue the benefits of another.

¶ 12 In *Gamble v. Sears*, the Montana Supreme Court recently reiterated that parties may not agree to enter into a legally invalid contract.<sup>7</sup> In the present case, not only do the parties insist upon doing exactly that, they ask this Court to approve the settlement and enter judgment to this effect. Their request is denied.

### ORDER

¶ 13 The parties' request for a stipulated settlement, dismissal, and judgment is **DENIED**.

¶ 14 The parties may amend their stipulated settlement, dismissal, and judgment in accordance with this Order and resubmit them for the Court's approval.

¶ 15 Any party to this dispute may have twenty days in which to request reconsideration from this ORDER.

DATED in Helena, Montana, this 22<sup>nd</sup> day of June, 2007.

(SEAL)

\s\ James Jeremiah Shea  
JUDGE

c: Michael G. Barer  
Kelly M. Wills

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<sup>7</sup> *Gamble v. Sears*, 2007 MT 131, fn. 6, \_\_\_ Mont. \_\_\_, \_\_\_ P.3d \_\_\_.